

113TH CONGRESS
1ST SESSION

S.

To enhance transparency for certain surveillance programs authorized by the Foreign Intelligence Surveillance Act of 1978 and for other purposes.

IN THE SENATE OF THE UNITED STATES

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Mr. FRANKEN (for himself, Mr. LEAHY, Mr. UDALL of New Mexico, Mr. BLUMENTHAL, Mr. MERKLEY, Mr. UDALL of Colorado, Mr. WYDEN, Mr. TESTER, and Mr. MARKEY) introduced the following bill; which was read twice and referred to the Committee on ■ ■ ■ ■ ■ ■ ■ ■ ■ ■

A BILL

To enhance transparency for certain surveillance programs authorized by the Foreign Intelligence Surveillance Act of 1978 and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Surveillance Trans-
5 parency Act of 2013”.

1 SEC. 2. ENHANCED PUBLIC REPORTING FOR ORDERS
2 UNDER THE FOREIGN INTELLIGENCE SUR-
3 VEILLANCE ACT OF 1978.

4 (a) ENHANCED REPORTING FOR ELECTRONIC SUR-
5 VEILLANCE ORDERS.—Section 107 of the Foreign Intel-
6 ligence Surveillance Act of 1978 (50 U.S.C. 1807) is
7 amended—

8 (1) by redesignating subsections (a) and (b) as
9 paragraphs (1) and (2), respectively;

10 (2) in paragraph (1), as redesignated by para-
11 graph (1) of this subsection, by striking “and” at
12 the end;

13 (3) in paragraph (2), as redesignated by para-
14 graph (1) of this subsection, by striking the period
15 at the end and inserting a semicolon; and

16 (4) by adding at the end the following:

17 “(3) the total number of individuals who were
18 subject to electronic surveillance conducted under an
19 order entered under this title, provided that if this
20 number is fewer than 500, it shall exclusively be ex-
21 pressed as a numerical range of ‘fewer than 500’
22 and shall not be expressed as an individual number;
23 and

24 “(4) the total number of citizens of the United
25 States and aliens lawfully admitted for permanent
26 residence (as defined in section 101(a)(20) of the

1 Immigration and Nationality Act (8 U.S.C.
2 1101(a)(20)) who were subject to electronic surveil-
3 lance conducted under an order entered under this
4 title, provided that if this number is fewer than 500,
5 it shall exclusively be expressed as a numerical range
6 of ‘fewer than 500’ and shall not be expressed as an
7 individual number.’’.

8 (b) ENHANCED REPORTING FOR PEN REGISTERS
9 AND TRAP AND TRACE DEVICES.—Section 406 of the
10 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
11 1846) is amended by adding at the end the following:

12 “(c)(1) Except as provided in paragraph (2), in April
13 of each year, the Attorney General shall submit to Con-
14 gress a report setting forth with respect to the preceding
15 year—

16 “(A) the total number of applications made for
17 orders approving the use of a pen register and trap
18 and trace devices under this title;

19 “(B) the total number of such orders either
20 granted, modified, or denied;

21 “(C) a good faith estimate of the total number
22 of individual persons whose electronic or wire com-
23 munications information was obtained through the
24 use of pen register or trap and trace devices author-
25 ized under an order entered under this title;

1 “(D) good faith estimates of the total numbers
2 of United States persons—

3 “(i) whose electronic or wire communica-
4 tions information was obtained through the use
5 of pen register or trap and trace devices author-
6 ized under an order entered under this title;

7 “(ii) whose electronic communications in-
8 formation was obtained through the use of pen
9 register or trap and trace devices authorized
10 under an order entered under this title, and the
11 number of such persons whose information was
12 subsequently reviewed or accessed by a Federal
13 officer, employee, or agent; and

14 “(iii) whose wire communications informa-
15 tion was obtained through the use of pen reg-
16 ister or trap and trace devices authorized under
17 an order entered under this title, and the num-
18 ber of such persons whose information was sub-
19 sequently reviewed or accessed by a Federal of-
20 ficer, employee, or agent; and

21 “(E) the total number of computer-assisted
22 search queries initiated by a Federal officer, em-
23 ployee, or agent in any database of electronic or wire
24 communications information obtained through the
25 use of a pen register or trap and trace device au-

1 thorized under an order entered under this title, and
2 the number of such queries whose search terms in-
3 cluded information from the electronic or wire com-
4 munications information of a United States person.

5 “(2) If an estimate specified in subparagraphs (C)
6 or (D) of paragraph (1) is fewer than 500, it shall exclu-
7 sively be expressed as a numerical range of ‘fewer than
8 500’ and shall not be expressed as an individual number.

9 “(3) Each report under this section shall be sub-
10 mitted in unclassified form and shall be made available
11 to the public 7 days after the date such report is submitted
12 to Congress.

13 “(4) Nothing in this subsection shall be construed to
14 authorize or in any other way affect the lawfulness or un-
15 lawfulness of installing or using a pen register or trap and
16 trace device.

17 “(5) In this subsection:

18 “(A) The terms ‘electronic communication’ and
19 ‘wire communication’ have the meanings given those
20 terms in section 2510 of title 18, United States
21 Code.

22 “(B) The term ‘individual person’ means any
23 individual and excludes any group, entity, associa-
24 tion, corporation, or governmental entity.

1 “(C) The term ‘United States person’ means a
2 citizen of the United States or an alien lawfully ad-
3 mitted for permanent residence (as defined in sec-
4 tion 101(a)(20) of the Immigration and Nationality
5 Act (8 U.S.C. 1101(a)(20)).”.

6 (c) ENHANCED REPORTING FOR BUSINESS RECORDS
7 REQUESTS.—Section 502 of the Foreign Intelligence Sur-
8 veillance Act of 1978 (50 U.S.C. 1862) is amended—

9 (1) in subsection (b)(3), by adding at the end
10 the following:

11 “(F) Records concerning electronic communica-
12 tions.

13 “(G) Records concerning wire communications.

14 “(H) Information described in subparagraph
15 (A), (B), (D), (E), or (F) of section 2703(c)(2) of
16 title 18, United States Code.”; and

17 (2) by amending subsection (c) to read as fol-
18 lows:

19 “(c)(1) Except as provided in paragraph (2), in April
20 of each year, the Attorney General shall submit to Con-
21 gress a report setting forth with respect to the preceding
22 year—

23 “(A) the total number of applications made for
24 orders approving requests for the production of tan-
25 gible things under section 501;

1 “(B) the total number of such orders either
2 granted, modified, or denied;

3 “(C) a good faith estimate of the total number
4 of individual persons whose tangible things were pro-
5 duced under an order entered under section 501;

6 “(D) good faith estimates of the total numbers
7 of United States persons—

8 “(i) whose tangible things were produced
9 under an order entered under section 501;

10 “(ii) who were a party to an electronic
11 communication of which a record was produced
12 under an order entered under section 501, and
13 the number of such persons whose records were
14 subsequently reviewed or accessed by a Federal
15 officer, employee, or agent;

16 “(iii) who were a party to a wire commu-
17 nication of which a record was produced under
18 an order entered under section 501, and the
19 number of such persons whose records were
20 subsequently reviewed or accessed by a Federal
21 officer, employee, or agent; and

22 “(iv) who were subscribers or customers of
23 an electronic communication service or remote
24 computing service and whose records, as de-
25 scribed in subparagraph (A), (B), (D), (E), or

1 (F) of section 2703(c)(2) of title 18, United
2 States Code, were produced under an order en-
3 tered under section 501, and the number of
4 such persons whose records were subsequently
5 reviewed by a Federal officer, employee, or
6 agent;

7 “(E) the total number of computer-assisted
8 search queries initiated by a Federal officer, em-
9 ployee or agent in any database of tangible things
10 produced under an order entered under section 501,
11 and the number of such queries whose search terms
12 included information from the electronic or wire
13 communications contents or records of a United
14 States person; and

15 “(F) a certification confirming that in the
16 course of the preceding year no orders entered under
17 section 501 were used to obtain the contents of an
18 electronic or wire communication.

19 “(2) If an estimate described in subparagraph (C) or
20 (D) of paragraph (1) is fewer than 500, it shall exclusively
21 be expressed as a numerical range of ‘fewer than 500’ and
22 shall not be expressed as an individual number.

23 “(3) Each report under this subsection shall be sub-
24 mitted in unclassified form and shall be made available

1 to the public 7 days after the date such report is submitted
2 to Congress.

3 “(4) Nothing in this subsection shall be construed to
4 authorize or in any other way affect the lawfulness or un-
5 lawfulness of using an order for the production of tangible
6 things under section 501 to obtain any of the items de-
7 scribed in subparagraphs (A) through (H) of subsection
8 (b)(3).

9 “(5) In this subsection:

10 “(A) The terms ‘contents’, ‘electronic commu-
11 nication’, ‘electronic communication service’, and
12 ‘wire communication’ shall have the meanings given
13 those terms in section 2510 of title 18, United
14 States Code.

15 “(B) The term ‘individual person’ means any
16 individual and excludes any group, entity, associa-
17 tion, corporation, or governmental entity.

18 “(C) The term ‘remote computing service’ has
19 the meaning given that term in section 2711 of title
20 18, United States Code.

21 “(D) The term ‘United States person’ means a
22 citizen of the United States or an alien lawfully ad-
23 mitted for permanent residence (as defined in sec-
24 tion 101(a)(20) of the Immigration and Nationality
25 Act (8 U.S.C. 1101(a)(20)).’”.

1 (d) ENHANCED REPORTING FOR ADDITIONAL PRO-
2 CEDURES REGARDING CERTAIN PERSONS OUTSIDE THE
3 UNITED STATES.—Section 707 of the Foreign Intelligence
4 Surveillance Act of 1978 (50 U.S.C. 1881f) is amended
5 by adding at the end the following:

6 “(c) ANNUAL REPORT.—

7 “(1) REQUIREMENT FOR REPORT.—In April of
8 each year, the Attorney General shall submit to Con-
9 gress a report setting forth with respect to the pre-
10 ceding year—

11 “(A) the total number of—

12 “(i) directives issued under section
13 702;

14 “(ii) orders granted under section
15 703; and

16 “(iii) orders granted under section
17 704;

18 “(B) good faith estimates of the total num-
19 bers of individual persons whose electronic or
20 wire communications or communications
21 records were collected pursuant to—

22 “(i) a directive issued under section
23 702;

24 “(ii) an order granted under section
25 703; and

1 “(iii) an order granted under section
2 704; and

3 “(C) good faith estimates of the total num-
4 bers of United States persons—

5 “(i) whose electronic or wire commu-
6 nications contents or records were collected
7 pursuant to—

8 “(I) a directive issued under sec-
9 tion 702;

10 “(II) an order granted under sec-
11 tion 703; and

12 “(III) an order granted under
13 section 704;

14 “(ii) who were a party to an electronic
15 communication whose contents were col-
16 lected pursuant to a directive issued under
17 section 702, and the number of such per-
18 sons whose communication contents were
19 subsequently reviewed or accessed by a
20 Federal officer, employee, or agent;

21 “(iii) who were a party to an elec-
22 tronic communication whose records (other
23 than content) were collected pursuant to a
24 directive issued under section 702, and the
25 number of such persons whose communica-

1 tion records were subsequently reviewed or
2 accessed by a Federal officer, employee, or
3 agent;

4 “(iv) who were a party to a wire com-
5 munication whose contents were collected
6 pursuant to a directive issued under sec-
7 tion 702, and the number of such persons
8 whose communication contents were subse-
9 quently reviewed or accessed by a Federal
10 officer, employee, or agent;

11 “(v) who were a party to a electronic
12 communication whose records (other than
13 content) were collected pursuant to a direc-
14 tive issued under section 702, and the
15 number of such persons whose communica-
16 tion records were subsequently reviewed or
17 accessed by a Federal officer, employee, or
18 agent; and

19 “(vi) who were subscribers or cus-
20 tomers of an electronic communication
21 service or remote computing service whose
22 records, as described in subparagraphs
23 (A), (B), (D), (E), and (F) of section
24 2703(c)(2) of title 18, United States Code,
25 were produced pursuant to a directive

1 issued under section 702, and the number
2 of such persons whose records were subse-
3 quently reviewed or accessed by a Federal
4 officer, employee, or agent.

5 “(2) STATEMENT OF NUMERICAL RANGE.—If
6 an estimate specified in subparagraphs (B) or (C) of
7 paragraph (1) is fewer than 500, it shall exclusively
8 be expressed as a numerical range of ‘fewer than
9 500’ and shall not be expressed as an individual
10 number.

11 “(3) PUBLIC AVAILABILITY.—Each report
12 under this subsection shall be submitted in unclassi-
13 fied form and shall be made available to the public
14 7 days after the date such report is submitted to
15 Congress.

16 “(4) DEFINITIONS.—In this subsection:

17 “(A) IN GENERAL.—The terms ‘contents’,
18 ‘electronic communication’, ‘electronic commu-
19 nication service’, and ‘wire communication’ have
20 the same meanings given those terms in section
21 2510 of title 18, United States Code.

22 “(B) INDIVIDUAL PERSON.—The term ‘in-
23 dividual person’ means any individual and ex-
24 cludes any group, entity, association, corpora-
25 tion, or governmental entity.

1 “(C) REMOTE COMPUTING SERVICE.—The
2 term ‘remote computing service’ shall have the
3 same meaning given that term in section 2711
4 of title 18, United States Code.

5 “(D) UNITED STATES PERSON.—The term
6 ‘United States person’ means a citizen of the
7 United States or an alien lawfully admitted for
8 permanent residence (as defined in section
9 101(a)(20) of the Immigration and Nationality
10 Act (8 U.S.C. 1101(a)(20)).

11 “(5) CONSTRUCTION.—Nothing in this section
12 shall be construed to authorize or in any other way
13 affect the lawfulness or unlawfulness of using an
14 order or directive under section 702, 703, or 704 to
15 collect any of the information described in subpara-
16 graph (B) or (C) of paragraph (1).”.

17 **SEC. 3. PUBLIC DISCLOSURES OF AGGREGATE INFORMA-**
18 **TION RELATED TO ORDERS UNDER THE FOR-**
19 **EIGN INTELLIGENCE SURVEILLANCE ACT OF**
20 **1978.**

21 (a) DISCLOSURES.—The Foreign Intelligence Surveil-
22 lance Act of 1978 (50 U.S.C. 1801 et seq.) is amended
23 by adding at the end the following:

1 **“TITLE IX—PUBLIC DISCLO-**
2 **SURES OF AGGREGATE IN-**
3 **FORMATION.**

4 **“SEC. 901. PUBLIC DISCLOSURES OF AGGREGATE INFOR-**
5 **MATION.**

6 “(a) IN GENERAL.—Except as provided under sub-
7 section (c), a person that has received an order under sec-
8 tion 105, 402, or 501, or an order or a directive under
9 section 702, 703, or 704 may, every six months with re-
10 spect to the preceding six month period, disclose to the
11 public information with respect to each statutory authority
12 as follows:

13 “(1) The total number of orders or directives
14 received under the authority.

15 “(2) The percentage or total number of such
16 orders or directives complied with, in whole or in
17 part.

18 “(3) The total number of individual persons,
19 users, or accounts whose information of any kind
20 was produced to the Government, or was obtained or
21 collected by the Government, under an order or di-
22 rective received under the authority.

23 “(b) NATURE OF PRODUCTION.—Except as provided
24 under subsection (c), a person that has received an order
25 under section 402 or 501, or an order or a directive under

1 section 702 may, every six months with respect to the pre-
2 ceding six month period, disclose to the public the total
3 number of individual persons, users, or accounts for whom
4 the following information was produced to the Govern-
5 ment, or was obtained or collected by the Government,
6 with respect to each such authority, if applicable:

7 “(1) The contents of electronic communications.

8 “(2) The contents of wire communications.

9 “(3) Records concerning electronic communica-
10 tions.

11 “(4) Records concerning wire communications.

12 “(5) Information described in subparagraph
13 (A), (B), (D), (E), or (F) of section 2703(c)(2) of
14 title 18.

15 “(c) STATEMENT OF NUMERICAL RANGE.—If the
16 total number of individual persons, users, or accounts
17 specified in paragraph (3) of subsection (a) or in para-
18 graphs (1), (2), (3), (4), or (5) of subsection (b) is fewer
19 than 500, it shall exclusively be expressed as a numerical
20 range of ‘fewer than 500’ and shall not be expressed as
21 an individual number.

22 “(d) PERMITTED DISCLOSURE.—No cause of action
23 shall lie in any court against any person for making a dis-
24 closure in accordance with this section.

1 “(e) CONSTRUCTION.—Nothing in this section shall
2 be construed—

3 “(1) to authorize or in any other way affect the
4 lawfulness or unlawfulness of using an order or di-
5 rective described in subsection (a) to obtain, collect,
6 or secure the production of information described in
7 paragraphs (1), (2), (3), (4), or (5) of subsection
8 (b); or

9 “(2) to prohibit, implicitly preclude, or in any
10 other way affect the lawfulness or unlawfulness of a
11 disclosure not authorized by this section.

12 “(f) DEFINITIONS.—In this section:

13 “(1) IN GENERAL.—The terms ‘contents’, ‘elec-
14 tronic communication’, and ‘wire communication’
15 have the meanings given those terms in section 2510
16 of title 18, United States Code.

17 “(2) INDIVIDUAL PERSON.—The term ‘indi-
18 vidual person’ means any individual and excludes
19 any group, entity, association, corporation, or gov-
20 ernmental entity.

21 “(3) PERSON.—The term ‘person’ has the
22 meaning given that term in section 101.’’.

23 (b) CONFORMING AMENDMENTS.—The Foreign In-
24 telligence Surveillance Act of 1978 is amended—

1 (1) in section 402(d)(2)(B)(ii)(I) (50 U.S.C.
2 1842(d)(2)(B)(ii)(I)), by inserting “except as per-
3 mitted by section 901,” before “shall not disclose”;
4 and

5 (2) in section 501(d) (50 U.S.C. 1861(d))—

6 (A) in paragraph (1)—

7 (i) in subparagraph (B), by striking
8 “or” at the end;

9 (ii) in subparagraph (C), by striking
10 the period at the end and inserting a semi-
11 colon and “or”; and

12 (iii) by adding at the end the fol-
13 lowing:

14 “(D) the public as permitted by section 901.”;
15 and

16 (B) in paragraph (2)(A) by inserting “sub-
17 paragraph (A), (B), or (C) of” after “pursuant
18 to”.

19 (c) TABLE OF CONTENTS AMENDMENT.—The table
20 of contents in the first section of th Foreign Intelligence
21 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is
22 amended by adding at the end the following:

“TITLE IX—PUBLIC DISCLOSURES OF AGGREGATE INFORMATION.

“Sec. 901. Public disclosures of aggregate information.”.